

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
EASTERN DIVISION

HARLEYSVILLE MUTUAL )  
INSURANCE COMPANY, )

Plaintiff, )

v. )

Case Number: 3:05 CV 469-C

GRADY'S TIRE & AUTO SERVICE, )  
INC., KENNETH LAMAR HUBBARD; )

NELDA SHAW, individually and as the )  
surviving wife and Administrator of the )

Estate of LEWIS CLENTON SHAW, )  
deceased, )

Defendants. )

**MOTION TO DISMISS DEFENDANT**

Comes now the plaintiff, Harleysville Mutual Insurance Company ("Harleysville"), pursuant to Rule 41 of the Federal Rules of Civil Procedure, and moves the court to dismiss the defendant, Grady's Tire & Auto Service, Inc. ("Grady's Tire"), with prejudice. In support of the motion, Harleysville shows unto the court the following:

1. Harleysville filed this declaratory judgment complaint seeking in part a judicial determination whether it had a duty to defend and indemnify Grady's Tire for an underlying wrongful death action against it.

2. Harleysville provided a defense to Grady's Tire in the underlying case.

3. The state court granted a summary judgment in favor of Grady's Tire after a hearing on July 11, 2005. It dismissed the wrongful death action against it and only maintained the worker's compensation claim. The worker's compensation claim is being defended under a separate policy issued to Grady's Tire.

4. Grady's Tire joins in this motion and is willing to execute a separate stipulation if requested by the court.



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R. Larry Bradford, Attorney for Plaintiff,  
Harleysville Mutual Insurance Company  
Attorney Bar Code: BRA039

OF COUNSEL:


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**CERTIFICATE OF SERVICE**

I hereby certify that I have this the 19 day of July, 2005, served a copy of the foregoing to all attorneys of record by placing a copy of same in the United States Mail, postage prepaid and properly addressed as follows:

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